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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 \* \* \*

8 LAURICE MCCURDY,  
9 Plaintiff,

2:08-CV-01742-PMP-PAL

10 vs.

**ORDER**

11 LEROY KIRKEGARD, et al.,  
12 Defendants.  
13

14 Before the Court for consideration is Defendant Leroy Kirkegard's fully  
15 briefed Motion to Dismiss Pursuant to FRCP 12(B)(6) (Doc. #39), filed on May 24,  
16 2010.

17 After a lengthy history of preliminary proceedings concerning the initiation  
18 of this action, Plaintiff Laurice McCurdy filed an Amended Civil Rights Complaint  
19 pursuant to 42 U.S.C. § 1983 (Doc. #18) filed August 10, 2010. On April 9, 2010,  
20 the Court issued an Order based upon an initial screening of Plaintiff's First  
21 Amended Complaint (Doc. #19), providing in part for Plaintiff McCurdy to maintain  
22 his claims against Defendant Leroy Kirkegard for (1) deliberate indifference to  
23 McCurdy's serious medical needs; (2) cruel and unusual punishment in the condition  
24 of McCurdy's confinement. Defendant Kirkegard now seeks dismissal of both  
25 remaining claims.  
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1 Specifically, Kirkegard argues that McCurdy's claim of deliberate  
2 indifference to a serious medical need should be dismissed because Plaintiff has not  
3 and cannot allege an actual connection or link between Kirkegard's actions and the  
4 alleged deprivation of a well established constitutional right. As to McCurdy's claim  
5 based upon cruel and unusual punishment in the conditions of this confinement,  
6 Defendant Kirkegard similarly argues that McCurdy alleges no conduct by Kirkegard  
7 related to McCurdy's slip and fall in the bathroom. The Court agrees.

8 In sum, after extensive efforts to formulate a viable Complaint under 42  
9 U.S.C. § 1983, Plaintiff McCurdy has failed to allege facts which if proved would  
10 entitle him relief against Defendant Kirkegard in his individual capacity. It is also  
11 clear that further opportunities to amend the pleadings would not alter the result.

12 **IT IS THEREFORE ORDERED that** Defendant Leroy Kirkegard's  
13 Motion to Dismiss Pursuant to FRCP 12(B)(6) (Doc. #39) is **GRANTED**.

14 **IT IS FURTHER ORDERED that** Defendant Kirkegard's Motion to  
15 Strike Plaintiff's Surreply (Doc. #86) is **DENIED** as moot.

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17 DATED: September 3, 2010.

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20 PHILIP M. PRO  
21 United States District Judge  
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